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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,734	05/22/2007	Richard Martin	06-132-A1	5512

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EXAMINER	
JAISLE, CECILIA M	

ART UNIT	PAPER NUMBER
1624	

MAIL DATE	DELIVERY MODE
12/17/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/595,734	MARTIN ET AL.	
	Examiner	Art Unit	
	Cecilia M. Jaisle	1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 August 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8-11,13,14 and 31-39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6, 8-11, 13, 14, 31-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED OFFICE ACTION

Lack of Unity

Applicants' confirmation of the election with traverse of Group I, claims 1-6, 8-11, 13, 14 and 31-39 in the Response of 10-06-2008 is acknowledged. Claims 1-6, 8-11, 13, 14 and 31-39 are under examination only to the extent that they are readable on the elected subject matter.

Rejections Under 35 USC 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. There is no support in the application as filed for the newly entered R1, R3, R4 and Q1 substituents cyanato, thiocyanato, selenocyanato, trifluoromethoxy and azido. There is no support in the application as filed for the newly presented genus of claims 37-39. This is a new matter rejection.

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 U.S.C. 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim subject matter which applicant regards as the invention.

R7 is undefined.

R12 is defined by all mono-valent moieties but R12 is shown as exclusively divalent. In addition, it is not possible to have alkenyl or alkynyl moieties of one (1) carbon atom.

Rejections Under 35 USC 102

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 11, 13, 14 and 31 are rejected under 35 USC 102(a) over Ahmad, et al., US 6887870, entitled to the date 19991012, describing compositions of RN 335063-13-3 as heterocyclic sodium/proton exchange inhibitors.

Response to 08-05-2009 Comments

Applicants assert that the amended claims do not encompass heterocycles at 4-pyrimidine position or phenyl at the 5-pyrimidine position, as Ahmad shows. Recall that pyrimidine is a symmetric ring, so 4- and 6-pyrimidine

positions are equivalent. R4 substituent (4-, 6-pyrimidine position) has optionally substituted heterocyclyl and the R3 substituent (at the 5-pyrimidine position) has optionally substituted aryl. This rejection is deemed sound and is maintained.

Claims 1, 11, 13, 14 and 31 are rejected under 35 USC 102(b) over Chu-Moyer, et al., US 6414149, patented 20020702, describing compositions of RN 300550-97-4 as sorbitol dehydrogenase inhibitors.

Response to 08-05-2009 Comments

Applicants assert that the amended claims do not have heterocycles at 4-pyrimidine position, as Chu-Moyer shows. Recall that 4- and 6-pyrimidine positions are equivalent. The R4 substituent (at 4-, 6-pyrimidine position) has optionally substituted heterocyclyl. This rejection is deemed sound and is maintained.

Claims 1, 11, 13, 14 and 31 are rejected under 35 USC 102(b) over Kinoshita, et al., WO 2000041999, published 20000720, describing compositions of RN 283599-15-5 and RN 283599-62-2 as insecticides.

Response to 08-05-2009 Comments

Applicants assert that the amended claims do not have aryl at 4-pyrimidine position, as Kinoshita shows. Recall that 4- and 6-pyrimidine positions are equivalent. The R4 substituent (at 4-, 6-pyrimidine position) has optionally substituted aryl. This rejection is deemed sound and is maintained.

Claims 1, 11, 13, 14, 31 and 33 are rejected under 35 USC 102(b) over Murata, et al., JP 2001139560, published 20010522, describing compositions of RN 340008-58-4 as autoimmune inflammatory disease remedies.

Response to 08-05-2009 Comments

Applicants assert that the amended claims do not have aryl at 4-pyrimidine position, as Murata shows. Recall that 4- and 6-pyrimidine positions are equivalent. The R4 substituent (at 4-, 6-pyrimidine position) has optionally substituted aryl. This rejection is deemed sound and is maintained.

Claims 1, 11, 13, 14, 31 and 33 are rejected under 35 USC 102(e) over Nunes, et al., WO 2005009443, entitled to the date of 20030624, describing compositions of RN 1058628-44-6 for treatment of inflammatory diseases.

Response to 08-05-2009 Comments

Applicants assert that the amended claims do not have aryl at 4-pyrimidine position, as Nunes shows. Recall that 4- and 6-pyrimidine positions are equivalent. The R4 substituent (at 4-, 6-pyrimidine position) has optionally substituted aryl. This rejection is deemed sound and is maintained.

Following are New Grounds of Rejection

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 102(a) over Gutheil, et al., US 20020004600, published 20020110. Compositions with formula (I) substituted pyrimidines, 4-phenoxy-2-arylpyrimidine, involves reacting an amidine compound of formula H2NC(=NH)R1 (II) or its salt with a 3,3-disubstituted vinylcarbonyl compound of formula (L)2C=C(R3)COR4 (III). The process is carried out in an inert solvent in the presence of a base and optionally a compound of formula HXR2. R1, R2 = optionally substituted alkyl, cycloalkyl, phenyl, heteroaryl; R3, R4 = H, or optionally substituted alkyl or phenyl; X = O or S; and L = halo or group of formula XR2 have activity as a pesticides and herbicides.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 102(b) over Bebbington, et al., WO 2002022606, published 20020321, describing compositions of RN numbers 404827-83-4, 404827-84-5, 404827-86-7, 404827-87-8, 404828-02-0, 404829-31-8, 404826-28-4, 404826-46-6, 404826-47-7, 404826-48-8, 404826-49-9, 404826-50-2, 404826-51-3, 404826-52-4, 404826-53-5, 404826-54-6, 404826-55-7, 404826-56-8, 404826-57-9, 404826-58-0, 404826-59-1, 404827-32-3, 404827-33-4, 404827-34-5, 404827-52-7, 404827-53-8, 404829-29-4, 404829-30-7, 404829-36-3, 404829-37-4, 404829-38-5, 404829-39-6, 404829-40-9, 404829-43-2, 404829-44-3, 404829-45-4, 404829-46-5, 404829-47-6, 404829-48-7, 404829-49-8, 404829-50-1, 404829-51-2, 404829-52-3, 404829-53-4, 404829-79-4, and 404829-82-9.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 102(b) over Davey, et al., US 6127376, issued 20001003, describing compositions of RN numbers 1100594-48-6, 1100594-50-0, 1100594-52-2, 1100594-53-3, 1100594-54-4, 1100594-55-5, 1100594-57-7, 1100594-60-2, 1100594-80-6, 274673-39-1, 274673-40-4, 274673-44-8, and 274673-45-9.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 102(b) over Bebbington, et al., WO 2002022608, published 20020321, describing compositions of RN numbers 404827-83-4, 404827-84-5, 404827-86-7, 404827-87-8, 404828-02-0, 404829-31-8, 404826-28-4, 404826-46-6, 404826-47-7, 404826-48-8, 404826-49-9, 404826-50-2, 404826-51-3, 404826-52-4, 404826-53-5, 404826-54-6, 404826-55-7, 404826-56-8, 404826-57-9, 404826-58-0, 404826-59-1, 404827-32-3, 404827-33-4, 404827-34-5, 404827-52-7, 404827-53-8, 404829-29-4, 404829-30-7, 404829-36-3, 404829-37-4, 404829-38-5, 404829-39-6, 404829-40-9, 404829-43-2, 404829-44-3, 404829-45-4, 404829-46-5, 404829-47-6, 404829-48-7, 404829-49-8, 404829-50-1, 404829-51-2, 404829-52-3, 404829-53-4, and 404829-79-4.

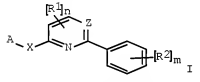
Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 102(b) over Sugiura, et al., JP 11158073, published 19990615, describing compositions having the RN numbers 228575-10-8, 228575-13-1, 228575-14-2, 228575-15-3,

228575-16-4, 228575-17-5, 228575-18-6, 228575-19-7, 228575-20-0, and 228575-21-1.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 US 102(b) over Brown, et al., WO 199823155, published 19980604, describing compositions of RN 186979-75-9.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 102(b) over Walker, WO 9820003, published 19980514, describing compositions having the RN numbers 207504-17-4 and 207504-18-5.

Claims 1-6, 8-11, 13, 14 and 31-36 are rejected under 35 USC 102(b) over Kleeman, et al., US 5849758, issued 19981215, describing:



The title compositions [I; A = (un)substituted aryl, 5-6 membered nitrogen-containing heteroaryl, difluorobenzodioxolyl; m = 0-5; n = 0-2; R1 = H, halo, (un)substituted alkyl, etc.; R2 = H, halo, (un)substituted alkyl, etc.; X = O, S; Z = N, CH; with the proviso that if A = 1-methyl-3-trifluoromethyl-pyrazol-5-yl, n = 0, X = O and Z = CH, then R2m does not represent H, 3-CF3, 2,4-Cl2 or 2,4-Me2], useful as herbicides, were prepared Compound I [A = 1-methyl-3-trifluoromethylpyrazol-5-yl; X = O; Z = CH; R1 = H; R2 = 3-CF3] showed complete control against Beta vulgaris and Zea mays in preemergence application at 100 g/ha. See especially compositions having RN numbers 202994-52-3, 180607-16-3, 180607-17-4, 180607-18-5, 180607-19-6, 180607-20-9, 180607-21-0, 180607-22-1, 180607-23-2, 180607-24-3, 180607-25-4, 180607-26-5, 180607-27-6, 180607-28-7, 180607-29-8, 180607-30-1, 180607-31-2, 180607-32-3, 180607-33-4, 180607-34-5, 180607-35-6, 180607-36-7, 180607-37-8, 180607-39-0, 180607-41-4, 180607-42-5, 180607-43-6, 180607-44-7, 180607-45-8, 180607-47-0, 180607-48-1, 180607-49-2, 180607-50-5, 180607-51-6, 180607-52-7, 180607-53-8, 180607-54-9, 180607-55-0, 180607-56-1, 180607-57-2, 180607-58-3, 180607-59-4, 180607-61-8, 180607-62-9, 180607-63-0, 180607-64-1, 180607-65-2, 180607-66-3, 180607-67-4, 180607-68-5, 180607-69-6, 180607-70-9, 180607-71-0, 180607-72-1, 180607-73-2, 180607-74-3, 180607-75-4, 180607-76-5, 180607-77-6, 180607-78-7, 180607-79-8, 180607-80-1, 180607-81-2, 180607-82-3, 180607-83-4, 180607-84-5, 180607-85-6, 180607-86-7, 180607-87-8, 180607-88-9, 180607-89-0, 180607-90-3, 180607-92-5, 180607-94-7, 180607-96-9, 180608-05-3, 180608-07-5, 180608-08-6, 180608-09-7, 180608-10-0, 180608-11-1, 180608-12-2, 180608-13-3, 180608-14-4, 180608-15-5, 180608-16-6, 180608-17-7, 180608-19-9, 180608-20-2, 180608-21-3, 180608-35-9, 202994-50-1, 202994-70-5, 202994-71-6, 202994-72-7, 202994-73-8, 202994-74-9, 202994-75-0, 202994-76-1,

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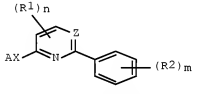
Claims 1-6, 8-11, 13, 14 and 31-36 are rejected under 35 US 102 (b) over Kleemann, et al., US 5824624, issued 19981020.



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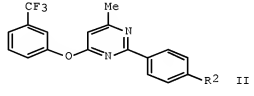

II

Pyrimidine compositions are disclosed, specifically I [A = (un)substituted aryl or (un)substituted 5- or 6-membered N-containing heteroarom. group or difluorobenzodioxolyl; m = 0-5; n = 0-2; R1 (or each R1) = H, halo, (un)substituted alkyl, alkenyl, alkynyl, alkoxy, (di)alkoxyalkyl, alkoxyalkoxy, alkylthio, (di)(alkyl)amino, alkoxyamino, formamidino; R2 (or each R2) = H, halo, (un)substituted alk(en/yn)yl, alkoxy, alkylthio, alkylsulfonyl, alkylsulfinyl, NO2, cyano, haloalkyl, haloalkoxy, haloalkylthio; X = O or S; Z = N or CH; with proviso that if A = 1-methyl-3-trifluoromethylpyrazol-5-yl, n = 0, X = O and Z = CH, then (R2)m ≠ H or 3-CF3 or 2,4-di-Cl or 2,4-di-Me]. Compounds of formula I are useful as herbicides. See especially compositions having RN numbers 180607-98-1, 180608-18-8, 180607-16-3, 180607-17-4, 180607-18-5, 180607-19-6, 180607-20-9, 180607-21-0, 180607-22-1, 180607-23-2, 180607-24-3, 180607-25-4, 180607-26-5, 180607-27-6, 180607-28-7, 180607-29-8, 180607-30-1, 180607-31-2, 180607-32-3, 180607-33-4, 180607-34-5, 180607-35-6, 180607-36-7, 180607-37-8, 180607-39-0, 180607-41-4, 180607-42-5, 180607-43-6, 180607-44-7, 180607-45-8, 180607-47-0, 180607-48-1, 180607-49-2, 180607-50-5, 180607-51-6, 180607-52-7, 180607-53-8, 180607-54-9, 180607-55-0, 180607-56-1, 180607-57-2, 180607-58-3, 180607-59-4, 180607-61-8, 180607-62-9, 180607-63-0, 180607-64-1, 180607-65-2, 180607-66-3, 180607-67-4, 180607-68-5, 180607-69-6, 180607-70-9, 180607-71-0, 180607-72-1, 180607-73-2, 180607-74-3, 180607-75-4, 180607-76-5, 180607-77-6, 180607-78-7, 180607-79-8, 180607-80-1, 180607-81-2, 180607-82-3, 180607-83-4, 180607-

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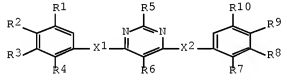
Claims 1-6, 8-11, 13, 14 and 31-36 are rejected under 35 USC 102(b) over Munro, et al., US 5707995, issued 19980113.



Compositions of formula I (X1, X2 = O, S(O)n, n = 0-2, CO, CH2, NR, R = H, alkyl; R1, R10 = H, halo; R2, R9 = H, halo, cyano, nitro, alkyl, haloalkyl, alkoxy, alkylthio, amino, mono- or di-alkylamino, alkoxyalkyl, haloalkoxyalkyl, alkoxycarbonyl; R3, R8 = H, Cl, alkyl, haloalkyl, haloalkenyl, haloalkynyl, haloalkoxy, haloalkoxycarbonyl, haloalkylthio, haloalkoxyalkyl, haloalkylsulfinyl, haloalkylsulfonyl, nitro, cyano; R4, R7 = H, halo, alkyl, alkoxy; R5 = H, halo, cyano, alkyl, haloalkyl, alkoxy, alkylthio, alkylsulfinyl, Ph; R6 = H, or when R5 = H, alkyl; provided that either each Ph is unsubstituted or at least one of R3 and R8 is not hydrogen), have acaricidal, insecticidal and ectoparasiticidal activities. See especially compositions of RN numbers 156592-13-1 and 156592-20-0.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 102(b) over Ohkubo, et al., Chem. & Pharm. Bull. (1994), 42(6), 1279-85, describing compositions with RN numbers 103294-21-9, 116904-25-7, 116904-26-8, 116904-27-9, 116904-28-0, 116904-30-4, 116904-35-9, 116904-53-1, 116904-57-5, 116904-65-5, 116904-66-6, 116904-67-7, 116904-68-8, 116904-69-9, 116924-79-9, 116924-80-2, 159970-99-7, 116904-36-0, 116904-37-1, 116904-38-2, 116904-39-3, 116904-40-6, 116904-41-7, 116904-43-9, 116904-44-0, 116904-45-1, 116904-47-3, 116904-48-4, 116904-51-9, 116904-52-0, 116904-54-2, 116904-55-3, 116904-61-1, 116904-62-2, 116904-63-3, 116904-64-4 and 159971-02-5. The compositions have antianoxic activity.

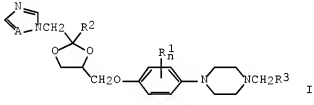
Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 102(b) over Clough, et al., EP 468695, published 19920129, describing compositions of RN 141190-49-0 as agrochemical fungicides.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 US 102(b) over

El-Bahaie, et al., Pharmazie (1991), 46(1), 26-8, Describing compositions of RN numbers 133761-04-3, 133761-06-5, 133761-08-7, 133761-20-3, and 133782-27-1, having antibacterial activity.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 102(b) over El-Kerdawy, et al., Archives of Pharmacal Research (1990), 13(2), 142-6, describing compositions of RN numbers 132165-77-6, 132165-78-7, 132165-79-8, 132165-71-0, 132165-72-1, 132165-69-6, and 132165-70-9, having bactericidal and fungicidal activity.

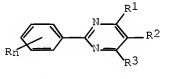
Claims 1-6, 8-11, 13, 14 and 31-36 are rejected under 35 USC 102(b) over Kampe, et al., US 4859670, issued 19890822.



I

The compositions of formula I [R1 = C1-3 alkyl, F, Cl; R2 = naphthyl, thienyl, halothienyl, (substituted) Ph; Y = (substituted) phenylpyrimidinyl, phenylpyridyl, quinolyl, isoquinolyl; A = CH, N; n = 0-2] were prepared as medicinal fungicides. See especially the compositions of RN numbers 111921-72-3, 111921-21-2, 111921-25-6, 111921-26-7, 111921-44-9, 111921-48-3, 111920-67-3, 111920-68-4, 111920-69-5, 111920-75-3, 111920-90-2, 111920-95-7, and 111943-51-2.

Claims 1-6, 8-11, 13, 14 and 31-36 are rejected under 35 USC 102(b) over Burdeska, et al., US 4493726, issued 19850115.

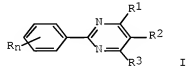


I

The phenylpyrimidines I (R = H, halo, CN, NO2, OH, C1-6 alkyl, alkoxy or alkylthio, etc.; R1 and R2 = halo, CN, OH, SH, C1-6 alkyl, etc.; R2 = H, halo, C1-6 alkyl, haloalkyl, or Ph; n = 1-5) are herbicide antidotes. See especially the compositions of RN numbers 72520-17-3, 77232-14-5, 77232-18-9, 77232-19-0, 77232-21-4, 77232-23-6, 79382-42-6, 79382-43-7, 79382-44-8, 79382-46-0, 79382-47-1, 79382-48-2, 79382-49-3, 79382-50-6, 79382-51-7, 79382-78-8, 79382-82-4, 83216-84-6, 83216-85-7, 83216-86-8, 83216-87-9, 83216-88-0, 83216-89-1, 83216-90-4, 83216-91-5, 83216-92-6, 83216-93-7, 83216-94-8,

83216-98-2, 83216-99-3, 83217-00-9, 83217-01-0, 83217-02-1, 83217-03-2, 83217-04-3, 95573-54-9, and 95573-55-0.

Claims 1-6, 8-11, 13, 14 and 31-36 are rejected under 35 USC 102(b) over Seiler, et al., EP 136976, published 19850410.



I

The phenylpyrimidines I (R = H, halo, NO2, CN, OH, alkyl, etc.; R1 and R2 = H, halo, alkyl, alkoxyalkyl, etc.; R3 = H, halo, alkyl, haloalkyl, or Ph) are plant growth regulators. See especially compositions of RN numbers 72520-17-3, 77232-14-5, 77232-18-9, 77232-19-0, 77232-21-4, 77232-23-6, 79382-42-6, 79382-43-7, 79382-44-8, 79382-46-0, 79382-47-1, 79382-48-2, 79382-49-3, 79382-50-6, 79382-51-7, 79382-78-8, 79382-82-4, 83216-84-6, 83216-85-7, 83216-86-8, 83216-87-9, 83216-88-0, 83216-89-1, 83216-90-4, 83216-91-5, 83216-92-6, 83216-93-7, 83216-94-8, 83216-98-2, 83216-99-3, 83217-00-9, 83217-01-0, 83217-02-1, 83217-03-2, 83217-04-3, 83217-71-4 and 97513-49-0.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 102(e) over Cirillo, et al., WO 2002092576, entitled to the date of 20010516, describing compositions having RN numbers 476009-78-6, 476009-80-0, 476009-82-2, and 476011-45-7.

Rejections Under 35 USC 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions

covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider applicability of 35 USC 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 USC 103(a).

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Following are New Grounds of Rejection

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 103(a) over Gutheil, et al., US 20020004600, published 20020110. Compositions with formula (I) substituted pyrimidines, 4-phenoxy-2-arylpyrimidine, involves reacting an amidine compound of formula H2NC(=NH)R1 (II) or its salt with a 3,3-disubstituted vinylcarbonyl compound of formula (L)2C=C(R3)COR4 (III). The process is carried out in an inert solvent in the presence of a base and optionally a compound of formula HXR2. R1, R2 = optionally substituted alkyl, cycloalkyl, phenyl, heteroaryl; R3, R4 = H, or optionally substituted alkyl or phenyl; X = O or S; and L = halo or group of formula XR2 have activity as a pesticides and herbicides. The claimed compounds are alkyl homologs and/or position isomers of the Gutheil compounds and obvious to the skilled chemist for the same utility.

It would have been obvious to one of ordinary skill in the art when the present invention was made to modify the Gutheil compound to prepare alkyl homologs and position isomers thereof. One having ordinary skill in the art would have been motivated to prepare the instantly claimed compounds because such structurally homologous and position isomeric compounds are expected to possess similar properties. It has been held that compounds that are structurally homologous and position isomeric to prior art compounds are *prima facie* obvious, absent a showing of unexpected results.

> An obviousness rejection based on similarity in chemical structure and function entails the motivation of one skilled in the art to make a claimed compound, in the expectation that compounds similar in structure will have similar properties.

In re Payne, 203 USPQ 245, 254 (CCPA 1979). See also *In re Papesch*, 137 USPQ 43 (CCPA 1963) and *In re Dillon*, 16 USPQ2d 1897 (Fed. Cir. 1991) (discussed in MPEP § 2144) for an extensive case law review pertaining to obviousness based on close structural chemical compound similarity. See also MPEP § 2144.08, ¶ II.A.4(c). Compounds that are homologs (compounds differing regularly by successive addition of the same chemical group, e.g., by CH3- groups) and position isomers (compounds differing by an adjacent or near adjacent functional group), as here, are generally of sufficiently close structural similarity that there is a presumed expectation that such compounds possess similar properties. *In re Wilder*, 195 USPQ 426 (CCPA 1977).

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 103(a) over Bebbington, et al., WO 2002022606, published 20020321, describing compositions of RN numbers 404827-83-4, 404827-84-5, 404827-86-7, 404827-87-8, 404828-02-0, 404829-31-8, 404826-28-4, 404826-46-6, 404826-47-7, 404826-48-8, 404826-49-9, 404826-50-2, 404826-51-3, 404826-52-4, 404826-53-5, 404826-54-6, 404826-55-7, 404826-56-8, 404826-57-9, 404826-58-0, 404826-59-1, 404827-32-3, 404827-33-4, 404827-34-5, 404827-52-7, 404827-53-8, 404829-29-4, 404829-30-7, 404829-36-3, 404829-37-4, 404829-38-5, 404829-39-6, 404829-40-9, 404829-43-2, 404829-44-3, 404829-45-4, 404829-46-5, 404829-47-6, 404829-48-7, 404829-49-8, 404829-50-1, 404829-51-2, 404829-52-3, 404829-53-4, 404829-79-4, and 404829-82-9. The claimed compounds are alkyl homologs and/or position isomers of the Bebbington compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 103(a) over Davey, et al., US 6127376, issued 20001003, describing compositions of RN numbers 1100594-48-6, 1100594-50-0, 1100594-52-2, 1100594-53-3, 1100594-54-4, 1100594-55-5, 1100594-57-7, 1100594-60-2, 1100594-80-6, 274673-39-1, 274673-40-4, 274673-44-8, and 274673-45-9. The claimed compounds are alkyl homologs and/or position isomers of the Davey compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 103(a) over Bebbington, et al., WO 2002022608, published 20020321, describing compositions of RN numbers 404827-83-4, 404827-84-5, 404827-86-7, 404827-

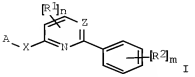
87-8, 404828-02-0, 404829-31-8, 404826-28-4, 404826-46-6, 404826-47-7, 404826-48-8, 404826-49-9, 404826-50-2, 404826-51-3, 404826-52-4, 404826-53-5, 404826-54-6, 404826-55-7, 404826-56-8, 404826-57-9, 404826-58-0, 404826-59-1, 404827-32-3, 404827-33-4, 404827-34-5, 404827-52-7, 404827-53-8, 404829-29-4, 404829-30-7, 404829-36-3, 404829-37-4, 404829-38-5, 404829-39-6, 404829-40-9, 404829-43-2, 404829-44-3, 404829-45-4, 404829-46-5, 404829-47-6, 404829-48-7, 404829-49-8, 404829-50-1, 404829-51-2, 404829-52-3, 404829-53-4, and 404829-79-4. The claimed compounds are alkyl homologs and/or position isomers of the Bebbington compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 103(a) over Sugiura, et al., JP 11158073, published 19990615, describing compositions with RN numbers 228575-10-8, 228575-13-1, 228575-14-2, 228575-15-3, 228575-16-4, 228575-17-5, 228575-18-6, 228575-19-7, 228575-20-0 and 228575-21-1. The claimed compounds are alkyl homologs and/or position isomers of the Sugiura compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 US 103(a) over Brown, et al., WO 199823155, published 19980604, describing compositions of RN 186979-75-9. The claimed compounds are alkyl homologs and/or position isomers of the Brown compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 103(a) over Walker, WO 9820003, published 19980514, describing compositions having the RN numbers 207504-17-4 and 207504-18-5. The claimed compounds are alkyl homologs and/or position isomers of the Walker compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Claims 1-6, 8-11, 13, 14 and 31-36 are rejected under 35 USC 103(a) over Kleeman, et al., US 5849758, issued 19981215, describing:

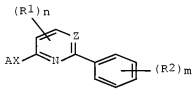


I

The title compositions [I; A = (un)substituted aryl, 5-6 membered nitrogen-containing heteroaryl, difluorobenzodioxolyl; m = 0-5; n = 0-2; R1 = H, halo, (un)substituted alkyl, etc.; R2 = H, halo, (un)substituted alkyl, etc.; X = O, S; Z = N; with the proviso that if A = 1-methyl-3-trifluoromethyl-pyrazol-5-yl, n = 0, X = O and Z = CH, then R2m does not represent H, 3-CF3, 2,4-Cl2 or 2,4-Me2], useful as herbicides, were prepared Compound I [A = 1-methyl-3-trifluoromethylpyrazol-5-yl; X = O; Z = CH; R1 = H; R2 = 3-CF3] showed complete control against Beta vulgaris and Zea mays in preemergence application. See especially compositions having RN numbers 202994-52-3, 180607-16-3, 180607-17-4, 180607-18-5, 180607-19-6, 180607-20-9, 180607-21-0, 180607-22-1, 180607-23-2, 180607-24-3, 180607-25-4, 180607-26-5, 180607-27-6, 180607-28-7, 180607-29-8, 180607-30-1, 180607-31-2, 180607-32-3, 180607-33-4, 180607-34-5, 180607-35-6, 180607-36-7, 180607-37-8, 180607-39-0, 180607-41-4, 180607-42-5, 180607-43-6, 180607-44-7, 180607-45-8, 180607-47-0, 180607-48-1, 180607-49-2, 180607-50-5, 180607-51-6, 180607-52-7, 180607-53-8, 180607-54-9, 180607-55-0, 180607-56-1, 180607-57-2, 180607-58-3, 180607-59-4, 180607-61-8, 180607-62-9, 180607-63-0, 180607-64-1, 180607-65-2, 180607-66-3, 180607-67-4, 180607-68-5, 180607-69-6, 180607-70-9, 180607-71-0, 180607-72-1, 180607-73-2, 180607-74-3, 180607-75-4, 180607-76-5, 180607-77-6, 180607-78-7, 180607-79-8, 180607-80-1, 180607-81-2, 180607-82-3, 180607-83-4, 180607-84-5, 180607-85-6, 180607-86-7, 180607-87-8, 180607-88-9, 180607-89-0, 180607-90-3, 180607-92-5, 180607-94-7, 180607-96-9, 180608-05-3, 180608-07-5, 180608-08-6, 180608-09-7, 180608-10-0, 180608-11-1, 180608-12-2, 180608-13-3, 180608-14-4, 180608-15-5, 180608-16-6, 180608-17-7, 180608-19-9, 180608-20-2, 180608-21-3, 180608-35-9, 202994-50-1, 202994-70-5, 202994-71-6, 202994-72-7, 202994-73-8, 202994-74-9, 202994-75-0, 202994-76-1, 202994-77-2, 202994-78-3, 202994-79-4, 202994-80-7, 202994-81-8, 202994-82-9, 202994-83-0, 202994-84-1, 202994-85-2, 202994-86-3, 202994-88-5, 202994-90-9, 202994-92-1, 202994-94-3, 202994-96-5, 202994-98-7, 202995-00-4, 202995-01-5, 202995-02-6, 202995-03-7, 202995-04-8, 202995-05-9, 202995-06-0, 202995-07-1, 202995-08-2, 202995-09-3, 202995-10-6, 202995-11-7, 202995-12-8, 202995-13-9, 202995-14-0, 202995-15-1, 202995-16-2, 202995-17-3, 202995-18-4, 202995-19-5, 202995-20-8, 202995-21-9, 202995-22-0, 202995-23-1, 202995-24-2, 202995-25-3, 202995-26-4, 202995-27-5, 202995-28-6, 202995-29-7, 202995-30-0, 202995-31-1, 202995-32-2, 202995-33-3, 202995-34-4, 202995-35-5, 202995-36-6, 202995-37-7, 202995-38-8, 202995-39-9, 202995-40-2, 202995-41-3, 202995-42-4, 202995-43-5, 202995-44-6, 202995-45-7, 202995-46-8, 202995-47-9, 202995-48-0, 202995-49-1, 202995-50-4, 202995-51-5, 202995-52-6, and 180608-02-0. The claimed comp-ounds are alkyl homologs and/or position

isomers of the Kleeman compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Claims 1-6, 8-11, 13, 14 and 31-36 are rejected under 35 USC 103(a) over Kleemann, et al., US 5824624, issued 19981020.



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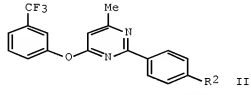
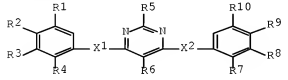


II

Pyrimidine compositions are disclosed, specifically I [A = (un)substituted aryl or (un)substituted 5- or 6-membered N-containing heteroarom. group or difluorobenzodioxolyl; m = 0-5; n = 0-2; R1 (or each R1) = H, halo, (un)substituted alkyl, alkenyl, alkynyl, alkoxy, (di)alkoxyalkyl, alkoxyalkoxy, alkylthio, (di)(alkyl)amino, alkoxyamino, formamidino; R2 (or each R2) = H, halo, (un)substituted alk(en/yn)yl, alkoxy, alkylthio, alkylsulfonyl, alkylsulfinyl, NO2, cyano, haloalkyl, haloalkoxy, haloalkylthio; X = O or S; Z = N or CH; with proviso that if A = 1-methyl-3-trifluoromethylpyrazol-5-yl, n = 0, X = O and Z = CH, then (R2)m ≠ H or 3-CF3 or 2,4-di-Cl or 2,4-di-Me]. Compounds of formula I are useful as herbicides. See especially compositions having RN numbers 180607-98-1, 180608-18-8, 180607-16-3, 180607-17-4, 180607-18-5, 180607-19-6, 180607-20-9, 180607-21-0, 180607-22-1, 180607-23-2, 180607-24-3, 180607-25-4, 180607-26-5, 180607-27-6, 180607-28-7, 180607-29-8, 180607-30-1, 180607-31-2, 180607-32-3, 180607-33-4, 180607-34-5, 180607-35-6, 180607-36-7, 180607-37-8, 180607-39-0, 180607-41-4, 180607-42-5, 180607-43-6, 180607-44-7, 180607-45-8, 180607-47-0, 180607-48-1, 180607-49-2, 180607-50-5, 180607-51-6, 180607-52-7, 180607-53-8, 180607-54-9, 180607-55-0, 180607-56-1, 180607-57-2, 180607-58-3, 180607-59-4, 180607-61-8, 180607-62-9, 180607-63-0, 180607-64-1, 180607-65-2, 180607-66-3, 180607-67-4, 180607-68-5, 180607-69-6, 180607-70-9, 180607-71-0, 180607-72-1, 180607-73-2, 180607-74-3, 180607-75-4, 180607-76-5, 180607-77-6, 180607-78-7, 180607-79-8, 180607-80-1, 180607-81-2, 180607-82-3, 180607-83-4, 180607-84-5, 180607-85-6, 180607-86-7, 180607-87-8, 180607-88-9, 180607-89-0, 180607-90-3, 180607-92-5, 180607-94-7, 180607-96-9, 180608-00-8, 180608-02-0, 180608-04-2, 180608-05-3, 180608-07-5, 180608-08-6, 180608-09-7, 180608-10-0, 180608-11-1, 180608-12-2, 180608-13-3, 180608-14-4, 180608-15-5, 180608-16-6, 180608-17-7, 180608-19-9, 180608-20-2, 180608-21-3, 180608-22-4, 180608-23-5, 180608-29-1, 180608-30-4, 180608-31-5, 180608-32-6, 180608-33-7, 180608-34-8, and 180608-35-9. The claimed compounds are alkyl homologs and/or position isomers of the Kleeman compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Claims 1-6, 8-11, 13, 14 and 31-36 are rejected under 35 USC 103(a) over Munro, et al., US 5707995, issued 19980113.



Compositions of formula I (X1, X2 = O, S(O)n, n = 0-2, CO, CH2, NR, R = H, alkyl; R1, R10 = H, halo; R2, R9 = H, halo, cyano, nitro, alkyl, haloalkyl, alkoxy, alkylthio, amino, mono- or di-alkylamino, alkoxyalkyl, haloalkoxyalkyl, alkoxycarbonyl; R3, R8 = H, Cl, alkyl, haloalkyl, haloalkenyl, haloalkynyl, haloalkoxy, haloalkoxycarbonyl, haloalkylthio, haloalkoxyalkyl, haloalkylsulfinyl, haloalkylsulfonyl, nitro, cyano; R4, R7 = H, halo, alkyl, alkoxy; R5 = H, halo, cyano, alkyl, haloalkyl, alkoxy, alkylthio, alkylsulfinyl, Ph; R6 = H, or when R5 = H, alkyl; provided that either each Ph is unsubstituted or at least one of R3 and R8 is not hydrogen), have acaricidal, insecticidal and ectoparasiticidal activities. See especially compositions of RN numbers 156592-13-1 and 156592-20-0. The claimed compounds are alkyl homologs and/or position isomers of the Munro compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

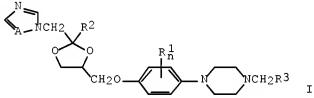
Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 103(a) over Ohkubo, et al., Chem. & Pharm. Bull. (**1994**), 42(6), 1279-85, describing compositions with RN numbers 103294-21-9, 116904-25-7, 116904-26-8, 116904-27-9, 116904-28-0, 116904-30-4, 116904-35-9, 116904-53-1, 116904-57-5, 116904-65-5, 116904-66-6, 116904-67-7, 116904-68-8, 116904-69-9, 116924-79-9, 116924-80-2, 159970-99-7, 116904-36-0, 116904-37-1, 116904-38-2, 116904-39-3, 116904-40-6, 116904-41-7, 116904-43-9, 116904-44-0, 116904-45-1, 116904-47-3, 116904-48-4, 116904-51-9, 116904-52-0, 116904-54-2, 116904-55-3, 116904-61-1, 116904-62-2, 116904-63-3, 116904-64-4 and 159971-02-5. The compositions have antianoxic activity. The claimed compounds are alkyl homologs and/or position isomers of the Ohkubo compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 103(a) over Clough, et al., EP 468695, published 19920129, describing compositions of RN 141190-49-0 as agrochemical fungicides. The claimed compounds are alkyl homologs and/or position isomers of the Clough compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 US 103(a) over El-Bahaie, et al., Pharmazie (**1991**), 46(1), 26-8, Describing compositions of RN numbers 133761-04-3, 133761-06-5, 133761-08-7, 133761-20-3, and 133782-27-1, having antibacterial activity. The claimed compounds are alkyl homologs and/or position isomers of the El-Bahaie compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 103(a) over El-Kerdawy, et al., Archives of Pharmacal Research (**1990**), 13(2), 142-6, describing compositions of RN numbers 132165-77-6, 132165-78-7, 132165-79-8, 132165-71-0, 132165-72-1, 132165-69-6, and 132165-70-9, having bactericidal and fungicidal activity. The claimed compounds are alkyl homologs and/or position isomers of the El-Kerdawy compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

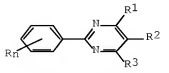
Claims 1-6, 8-11, 13, 14 and 31-36 are rejected under 35 USC 103(a) over Kampe, et al., US 4859670, issued 19890822.



I

The compositions of formula I [R1 = C1-3 alkyl, F, Cl; R2 = naphthyl, thienyl, halothienyl, (substituted) Ph; Y = (substituted) phenylpyrimidinyl, phenylpyridyl, quinolyl, isoquinolyl; A = CH, N; n = 0-2] were prepared as medicinal fungicides. See especially the compositions of RN numbers 111921-72-3, 111921-21-2, 111921-25-6, 111921-26-7, 111921-44-9, 111921-48-3, 111920-67-3, 111920-68-4, 111920-69-5, 111920-75-3, 111920-90-2, 111920-95-7, and 111943-51-2. The claimed compounds are alkyl homologs and/or position isomers of Kampe compounds and obvious to the skilled chemist for the same utility. See the discussion above about the obviousness of alkyl homologs and/or position isomers.

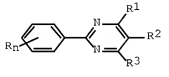
Claims 1-6, 8-11, 13, 14 and 31-36 are rejected under 35 USC 103(a) over Burdeska, et al., US 4493726, issued 19850115.



I

The phenylpyrimidines I (R = H, halo, CN, NO2, OH, C1-6 alkyl, alkoxy or alkylthio, etc.; R1 and R2 = halo, CN, OH, SH, C1-6 alkyl, etc.; R2 = H, halo, C1-6 alkyl, haloalkyl, or Ph; n = 1-5) are herbicide antidotes. See especially the compositions of RN numbers 72520-17-3, 77232-14-5, 77232-18-9, 77232-19-0, 77232-21-4, 77232-23-6, 79382-42-6, 79382-43-7, 79382-44-8, 79382-46-0, 79382-47-1, 79382-48-2, 79382-49-3, 79382-50-6, 79382-51-7, 79382-78-8, 79382-82-4, 83216-84-6, 83216-85-7, 83216-86-8, 83216-87-9, 83216-88-0, 83216-89-1, 83216-90-4, 83216-91-5, 83216-92-6, 83216-93-7, 83216-94-8, 83216-98-2, 83216-99-3, 83217-00-9, 83217-01-0, 83217-02-1, 83217-03-2, 83217-04-3, 95573-54-9, and 95573-55-0. The claimed compounds are alkyl homologs and/or position isomers of the Burdeska compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Claims 1-6, 8-11, 13, 14 and 31-36 are rejected under 35 USC 103(a) over Seiler, et al., EP 136976, published 19850410.



I

The phenylpyrimidines I (R = H, halo, NO2, CN, OH, alkyl, etc.; R1 and R2 = H, halo, alkyl, alkoxyalkyl, etc.; R3 = H, halo, alkyl, haloalkyl, or Ph) are plant growth regulators. See especially compositions of RN numbers 72520-17-3, 77232-14-5, 77232-18-9, 77232-19-0, 77232-21-4, 77232-23-6, 79382-42-6, 79382-43-7, 79382-44-8, 79382-46-0, 79382-47-1, 79382-48-2, 79382-49-3, 79382-50-6, 79382-51-7, 79382-78-8, 79382-82-4, 83216-84-6, 83216-85-7, 83216-86-8, 83216-87-9, 83216-88-0, 83216-89-1, 83216-90-4, 83216-91-5, 83216-92-6, 83216-93-7, 83216-94-8, 83216-98-2, 83216-99-3, 83217-00-9, 83217-01-0, 83217-02-1, 83217-03-2, 83217-04-3, 83217-71-4 and 97513-49-0. The claimed compounds are alkyl homologs and/or position isomers of the Seiler compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Claims 1-6, 8-11, 13, 14 and 31-39 are rejected under 35 USC 103(a) over Cirillo, et al., WO 2002092576, entitled to the date of 20010516, describing compositions having RN numbers 476009-78-6, 476009-80-0, 476009-82-2, and

476011-45-7. The claimed compounds are alkyl homologs and/or position isomers of the Cirillo compounds and obvious to the skilled chemist for the same utility. See the discussion above regarding the obviousness of alkyl homologs and/or position isomers.

Objectionable Claims

Claims 1-11, 13, 14 and 31-36 are objectionable as directed to elected and non-elected subject matter. They should be amended to recite only elected subject matter, as set forth above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cecilia M. Jaisle whose telephone number is 571-272-9931. The examiner can normally be reached on Monday through Friday; 8:30 am through 5:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cecilia M. Jaisle/
Examiner, Art Unit 1624

/James O. Wilson/
Supervisory Patent Examiner, AU 1624